

STATE: MINNESOTA

ATTACHMENT 7.2-A

Effective: July 1, 1995

TN: 95-22

Approved: 9/1/95

Supersedes: 92-22

NON-DISCRIMINATION COMPLIANCE

The Department's Provider Agreement contains a provision that Medicaid providers agree, as a condition of participation in the Medicaid program, to:

Comply with all federal statutes, implementing regulations and guidance prohibiting discrimination on the basis of race, color, national origin, sex, age, religion and disability in any program or activity receiving federal financial assistance from the U.S. Department of Health and Human Services; and to comply with the Minnesota Human Rights Act.

Referrals of allegations of discrimination are referred to the Minnesota Department of Human Rights for investigation and enforcement actions. Providers determined to be in violation of the non-discrimination language of the Provider Agreement are subject to various sanctions including fines, restraining orders, and punitive damages.

Part 9553.0041 Subpart 8. Deadlines and Extensions.

Statement of Need:

It is necessary to establish time limitations or deadlines for the submission of the required reports to facilitate the establishment of rates in a timely manner. The subpart also covers the policy governing granting extensions to deadlines and the consequences of failure to provide accurate and complete documentation.

Reasonableness:

Item A states that annual cost reports must be submitted by March 31 following the December 31 close of the reporting year. It is necessary to provide a definite time frame in which reporting is to be completed and a 90-day or three month preparation time is a reasonable period. A three month deadline is the same as that required by Minnesota Statutes, section 256B.48, subdivision 2 which governs reimbursement to nursing homes.

Item B specifies the remedies for incomplete or inaccurate reports. Facilities are given 20 days to correct and return the report after written notice from the commissioner of deficiencies. This is a reasonable request because the department must analyze over 300 reports in a five-month period and, therefore, the information is needed in a timely manner.

Item C governing the 30-day extension provides double the extension time allowed to nursing homes. Minnesota Statutes, section 256B.48, subdivision 4, provides for a 15-day extension for nursing homes, so a 30-day extension period for ICF/MR is adequate.

Part 9553.0041 Subpart 9. Effective Date of Total Payment Rate.

Statement of Need:

It is necessary that a facility know what to anticipate as revenue from the medical assistance program in planning its budget.

Reasonableness:

This subpart stipulates that each facility be notified by September 1 of the payment rate to be effective on October 1 of that year. Minnesota Statutes, section 256B.431 stipulates that nursing home providers be given a 15-day prior notice of the payment rate on or before June 15, 1983 and a 60-day prior notice after June 15, 1983. The 30-day prior notice given to ICF/MR providers falls within that range of reasonableness.

Part 9553.0041 Subpart 10. Noncompliance.

Statement of Need:

It is necessary to address the situation in which a participating vendor fails to provide information required to support a payment rate without having to terminate the provider's participation in the Medical Assistance program.

Reasonableness:

Requirements without sanctions are meaningless. Subpart 9 provides

79 # 863 Date Rec'd 3-20-86
Su, des 7-22-86
State Rep. In. 1-1-86

limited sanctions for failure to comply with reporting requirements. The same sanctions were established in Minnesota Statutes, section 256B.48, subdivision 3 for nursing home providers. Due to similarities in the reimbursement process between nursing homes and ICFs/MR, a similar sanction for ICF/MR providers is reasonable.

Part 9553.0041 Subpart 11. Audits.

Statement of Need:

Subpart 11 provides for audit of ICFs/MR records and annual cost reports. The department is responsible for the administration of public funds and for the fulfillment of federal and state program requirements. The Department must determine if the participating vendors are meeting statutory and regulatory requirements and are qualified to receive public funds. The audit procedure is the department's tool for making this determination.

Reasonableness

Auditing is a requirement of federal regulation 42 CFR, section 447.253 (e). It is the department's primary tool for determining if vendors are meeting statutory and regulatory requirements and are qualified to receive public funds. Therefore, it is reasonable that time limits for correction of inadequacies in facility accounting and for commencing and completing audits by the state be specified for the protection of both the provider and the taxpayer. The Department cannot field audit all ICFs/MR within one year, so the department is on a four-year cycle to complete the audits of all ICFs/MR. This is the reason the field audit may cover the four most recent annual cost reports. As a benchmark to assist in maintaining the four-year audit cycle, it is reasonable to require that a field audit be completed 90 days after commencement for single facilities and 180 days after commencement for provider groups.

Part 9553.0041 Subpart 12. Suspension of Audit.

Statement of Need:

It may be necessary to suspend a field audit when the provider's books and records are unavailable or unauditable or for good cause. An example of good cause to suspend an audit is a strike by state employees. However, it is also necessary to specify notification requirements and audit extension timelines for providers whose field audits are suspended.

Reasonableness:

If an audit is suspended, it is reasonable that providers be notified in writing of the date of suspension and of the date when the audit will again commence and that the deadline for the audit be extended by the time of the extension.

Part 9553.0041 Subpart 13. Adjustments.

Statement of Need:

It is necessary to establish limits for payment of adjustments to a facility payment rate which result from desk or field audit findings to

86-3 Date Rec'd 3-20-86
Superc. s Date Appr. 7-22-86
State Rep. In. 1-1-86

OFFICIAL

insure that only a material adjustment results in a recomputation of the payment rate.

Reasonableness:

Item A establishes a threshold of \$.05 per resident day or \$2000 cost change for adjustments. If an adjustment does not result in at least this amount of change in reimbursement, the cost of making the adjustment is not justified by the resulting change in reimbursement. Retroactive adjustments mandated in Item B are reasonable because the Department must insure the accuracy of the rates paid under the Medical Assistance Program.

Item C establishes a 120-day payment time limit for payment of overpayments or underpayments. One hundred twenty days is a reasonable amount of time for repayment and the limit is the same for the provider as for the Medical Assistance Program.

Item D establishes the time limits for payment of underpayments or overpayments after the resolution of an appeal. The time limit is the same for providers and the Medical Assistance Program.

Item E establishes the interest rate to be charged on balances outstanding after the 120-day limit. The interest rate is the same as that charged by the Commissioner of the Department of Revenue for late payment of taxes. It is reasonable to assess interest on balances outstanding after 120 days and to use the rate established by the Commissioner of Revenue because interest reflects the cost associated with a debt and the rate of interest established by the Department of Revenue reflects the cost of borrowing money at a given time.

Item F restricts desk and field audit adjustments to the limitations stipulated in rule part 9553.0070, subpart 2, which states the total payment rate should not exceed the rate paid by private paying residents. This is reasonable because the same total payment rate restriction should apply both before and after an audit. Item G stipulates that changes in the total payment rate resulting from desk or field audit adjustments to cost reports for reporting years beyond the four most recent annual cost reports must be made to the four most recent annual cost reports, the current cost report, and future cost reports. This is reasonable because some adjustments to the total payment rate in one year may have an impact on total payment rates for future years.

Part 9553.0041 Subpart 14. Amended Reports.

Statement of Need:

Subpart 14 recognizes the fact that errors can occur and allows facilities to amend previously submitted reports upon discovery of errors which could affect the payment rate.

Reasonableness:

It is reasonable to place a threshold on amendments resulting from error in order to assure that there is sufficient justification to justify the time and expense of departmental review. Furthermore, a time limitation is placed upon the facility requiring them to correct their errors and submit amendments within 14 months of the filing of the cost report. This is done to encourage timely and prompt evaluation of records and practices con-

HCF 7
86-3
Date Rec'd 3-20-86
Date Appr. 7-22-86
Date Eff. 1-1-86
Supervisor
State Rep. In.

OFFICIAL

ductive to efficient and economic operations. Furthermore, it is reasonable because during that time period the facility will be preparing information for its tax returns and also preparing the following year's cost report.

Unfavorable choices between alternate methods of reporting costs are not considered errors or omissions in this context. These are considered "judgment" errors and their exclusion is consistent with their treatment in the nursing home reimbursement rule.

It does not seem reasonable to require the time and expense of departmental review for removing the costs of services from the payment rate for which the facility is seeking a separate billing.

It is reasonable to limit to two the number of times a previously filed cost report can be amended so that the time and expense involved in departmental reviews are limited and to encourage completeness and accuracy on the part of the provider.

Part 9553.0041 Subpart 15. False Reports.

Statement of Need:

Subpart 15 deals with the problem that may occur if a facility knowingly submits false reports. This problem is distinct from that governed by subpart 10. Subpart 15 deals with intent to receive funds from the state to which the vendor knows it is not entitled. This requires special attention and sanctions tailored to the offense.

Reasonableness:

In cases of false reports, it is reasonable that the state be entitled to adjust the facility's payment rate to recover the overpayment immediately. Termination of the commissioner's agreement with the provider and prosecution under applicable statutes or federal laws are also reasonable remedies for the state. These sanctions are consistent with those outlined for nursing homes in Minnesota Statutes, section 256B.48, subdivision 5.

IX. DETERMINATION OF THE TOTAL OPERATING COST PAYMENT RATE - Part 9553.0050

Statement of Need and Reasonableness:

This section of the rule provides for calculations that start with aggregate information and result in a rate per resident day. The establishment of an operating cost payment rate is necessary as a component of the total payment rate so that billings and payments can be made.

Statement of Need:

• Subpart 1 establishes the allowable historical operating cost per diem. It is necessary to do this because prospective rates are a function of historical costs and are calculated to reflect a unit of service per day.

Reasonableness:

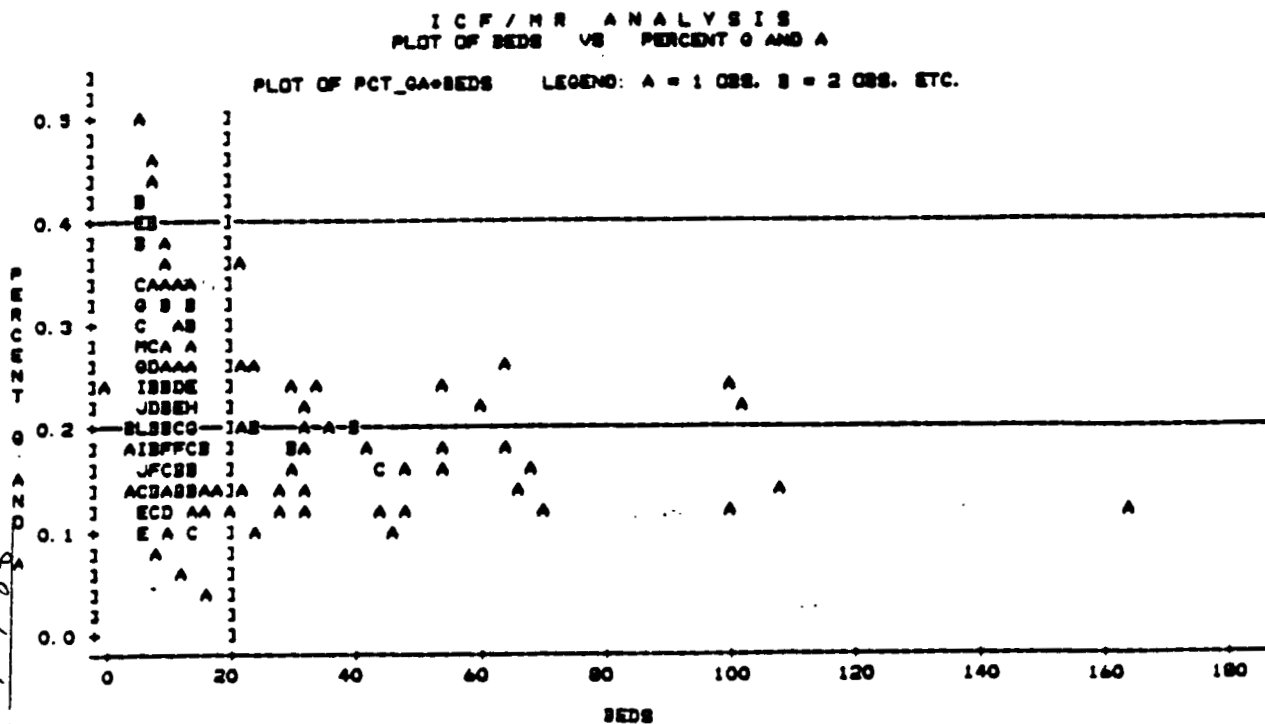
Item A establishes facility specific limits on a facility's program, maintenance, and administrative costs. It is necessary to establish limits to meet the legislative standard at Minnesota Statutes, section 256B.501,

86-3 Date Rec'd 3-20-86
Superc Date Appr. 7-22-86
State Rep. In. 1-1-86

OFFICIAL

subdivision 2. This states that rates must be established on the basis of methods and standards that the commissioner finds adequate to provide for the costs that must be incurred for quality care of residents in economically and efficiently operated facilities.

Subitem 1 establishes limits on the administrative costs of facilities based upon the number of beds. This limit is in response to the legislative mandate at 256B.501, subdivision 3. This states that in developing the procedures, the commissioner shall include limits on the amount of reimbursement administrative costs. The limits on administrative costs are based upon information obtained from 289 cost reports for fiscal years ending mainly in 1983. The data reflects allowable costs after the desk audit and application of the top management limits in effect at the time. Thus, because the limit computed in this item is developed on a percentage basis and because cost classifications and top management limits are essentially the same, skewing due to rule changes and cost changes through time are eliminated. Also, payroll taxes and fringe benefits not associated with administrative salaries in total were removed from the administrative cost category before computing the limits. The following chart illustrates the relationship between the number of beds in a facility and the ratio of allowable administrative costs to allowable operating costs other than administrative costs, expressed as a percentage. (See also Exhibit F.)



It is necessary and reasonable to establish groups by bed size because, as illustrated by the chart, the percentage of costs attributable to administration generally decreases as size increases. Although this relationship is not linear and a facility may increase the percentage as size increases, this factor is outweighed by the finding that at a specific bed size the range of percentages is large. At 15 beds, for example, the administrative percentage varies from 9.1 to 33.8 percent. Thus, the groupings are established at less than 21 beds and greater than 20 beds because there is a natural gap in the distribution. The high drops off between clusters on either side and the range for any particular size above 20 beds is smaller. The percentage limits are reasonably established at 20 percent for facilities with less than 21 beds and 16 percent for facilities with more than 20 beds as this reflects the weighted average for each group:

HCFA
16-3
Date Rec'd 3-20-86
Date Appr. 7-22-86
Date Eff. 1-1-86
Superceded
State Rep. In.

OFFICIAL

$$20 \text{ percent} = \frac{\$5,996,254}{\$29,728,690}$$

$$16 \text{ percent} = \frac{\$5,255,898}{\$32,006,994}$$

The average is cost weighted because costs vary with bed size and thus this approach reinforces the size variable within a group. The formula which derives the percentage for individual facilities reasonably excludes administrative costs from the denominator so that allowable administrative costs cannot be increased simply by increasing administrative costs. A similar formula is used in Minnesota Rules, parts 9549.0050 [Temporary].

Subitem 1 also allows the commissioner to recompute the limits once within a five year period because the limits after a period of time may not be appropriate.

Subitems 2 to 3 establish limits on the allowability of historical costs and exceptions to those limits. These limits are in response to the legislative mandate at Minnesota Statutes, section 256B.501, subdivision 3. This states that in developing the procedures, the commissioner shall include cost containment measures that assure that operating cost increases do not exceed increases to other sections of the economy. These limits essentially require allowable historical operating costs in the three cost categories not to exceed historical rates for the same cost categories during the same time period. It is necessary and reasonable to incorporate these limits because, without the provision, providers could overspend the rates and have the costs built into the historical base which is trended. This results in increases that are greater than the index and thus greater than increases in other sectors of the economy. For example, on a per day basis, a facility that has a \$10 rate, but incurs a \$12 cost would have the \$12 updated (assume by 10 percent). This facility's rate would have increased:

$$32 \text{ percent} = \frac{(\$12.(1.1) - \$10)}{\$10}$$

or more than three times the amount established as a reflection of cost increases in other sectors of the economy. Units (a) to (c) of subitem 2 specify the method that will be used to separate operating rates into the program, maintenance, and administrative components. This adjustment is necessary for reporting years prior to October 1, 1986 because rates during that time period are not separately identified in the payment rate as a function of the individual cost categories. The method used to make this adjustment is reasonable because the rate components that result are derived based upon each component's percentage of total cost and the sums will equal 100 percent. Subitem 3 allows a facility to exceed the limits on program operating costs to the extent that the historical operating costs in maintenance and administrative cost categories are below the limits. It is necessary and reasonable to exclude the program cost category from this net calculation because it would then be possible to increase nondirect care costs by reducing direct care costs. This would be contrary to the intent of encouraging quality programs. The payment rates used to calculate the limits on the historical base do not include the efficiency allowance in subpart 2 because to include the efficiency allowance as part of the three payment rates would provide for a perpetual efficiency after reducing costs in only the first year. Since the efficiency allowance is an add-on to these payment rates, the facility must continue to be efficient in order to continue to receive the efficiency allowance.

HCFA 86-3 Date Rec'd 3-20-86
Supercor. 7-22-86
State Rep. In. 1-2 Date Appr. 1-1-86
Date Eff.

OFFICIAL

It is reasonable to allow increases in program costs that exceed increases in other sectors of the economy provided that the total historical operating costs do not exceed those increases. Furthermore, these limits are facility specific and known to the facility before expenditures are incurred. Therefore, a facility that takes adequate steps to prepare and control its budget need not be affected by the limits.

Items B, C, and D establish separate allowable historical per diems for the program, maintenance, and administrative cost categories. Each per diem is computed by dividing allowable historical operating costs into each category by the greater of resident days or 85 percent of capacity days. The use of the greater of the resident days or 85 percent of capacity days is a necessary and reasonable method to assure economical and efficient operation. Without this provision, per diems would increase as occupancy decreases. It is further based upon Minnesota Statute, section 256B.501 subdivision 3, which states that the commissioner shall consider the legislative auditor recommendations on residential programs for the mentally retarded. That report recommended, on page 69, that "DPW should apply a minimum occupancy factor of 85 to 90 percent for facilities of fewer than 11 beds." This is based upon findings that small facilities should not experience lower long-term occupancy rates than large facilities. Also, occupancy rates in the industry average 97 percent and, thus, it is reasonable to expect a facility to operate at or above 85 percent of capacity.

Item E requires that the three separate historical operating cost per diems be aggregated into one per diem. This is necessary and reasonable step in order to calculate the facility's payment rate.

Item F states that payments are not retroactively equalized with expenses except in specific cases. It is necessary and reasonable to do this so that a prospective rate system can be maintained. To do otherwise would render the rate setting system of limits and incentives useless and would negate the need for prudent management. The exception for a field audit adjustment is necessary and reasonable because a field audit is performed to verify and correct costs incurred for prior periods so that payments to a facility are accurate. The exception for a settle-up payment rate is necessary and reasonable because the interim rate which the settle-up rate replaces was based upon estimated costs.

Statement of Need and Reasonableness

Subpart 2 provides for the establishment of the total operating cost payment rate. The subpart establishes the necessary intermediate steps which provide for the transition from a facility's allowable historical operating cost per diem in each of the three cost categories (program, maintenance, administrative) to a prospective operating cost payment rate.

Statement of Need and Reasonableness

* Item A specifies that a facility's allowable historical operating cost per diem in the three cost categories be indexed. This is necessary in order to account for the time lag and thus the cost lag between the period for which costs are reported (the reporting year) and the period for which rates are established (the rate year). The index used to update the historical per diems is the change in the all urban consumer price index (CPI-U) for Minneapolis-St. Paul between the two most recent Januarys prior to the rate year. It is reasonable to incorporate this index because it reflects cost changes in the market basket of goods that represent pur-

HCFA 863 Date Rec'd 3-20-86
Supereo 7-22-86
State Rep. In. 1-1-86

OFFICIAL

chases by consumers. This, in turn, is generally based upon cost changes incurred in the production of the items included in the CPI market basket. Thus, although wages, for example, are not explicitly recognized as an item in the market basket, cost changes for wages are an implicit part of the individual items. Also, a market basket which would reflect ICF/MR cost inputs and weights does not exist for Minnesota. Therefore, the CPI-U is the best readily available index and it historically has been included as part of the ICF/MR payment mechanism on a statewide basis for unidentified cost increases under Rule 52 and for operating cost increases under 12 MCAR 2.05315 [Temporary].

It is reasonable to annualize the index because the difference between common points in the reporting year and the rate year is 21 months rather than 12 months. A January to January index is used because it corresponds with the most recent reporting year for which the index is available. Although this information is historical at the time of its use, it is a reasonable approach to cost changes since it represents the change in prices of goods and services purchased during the reporting year, and it is the most readily available for that time frame. Additionally, the lag will be built into rates the next year and it avoids the need to predict inflation with subsequent retroactive cost settlements. Further, Minnesota Statutes, section 256B.501, subdivision 3, requires that increases in operating costs do not exceed increases in other sections of the economy.

Statement of Need and Reasonableness:

Item B provides for the use of the index to update a facility's allowable program operating cost per diem to derive the program operating cost payment rate. The exception for the one-time adjustment to the program operating cost payment rate is included because these costs represent an add-on that is not reflected in the historical base. It is reasonable to provide for the update and exception mechanism because to do otherwise would result in the absence of cost trending.

Statement of Need and Reasonableness:

Items C and D provide for the method to compute the facility's payment rate from the allowable historical operating cost per diem of the same cost categories. Item C pertains to the maintenance cost category and Item D pertains to the administrative cost category. Items C and D include identical methods for the calculation of the two payment rates. Both allowable historical operating per diems are updated via the index to derive the operating cost payment rates. It is reasonable to provide for the update because to do otherwise would result in an absence of cost trending.

Statement of Need and Reasonableness:

Item E provides for an efficiency incentive on the total allowable historical operating cost. To be eligible for this payment, a facility's costs must be below the sum of the established historical operating limits. However the facility's program allowable historical operating costs must not be below the respective limit on those costs. Facilities which meet both conditions will receive the difference between the facility-specific per diem and the limit up to a maximum of \$2 per resident per day. The efficiency allowance is derived from the greater of resident days or 85 percent of capacity because historically based costs in the same categories are determined in this manner. An efficiency allowance is not paid when

86-3
3-20-86
7-22-86
1-1-86

ORIGINAL

allowable program costs are below the program limit because the state does not want to create an incentive to reduce program costs. Without this constraint, a facility could generate efficiency dollars by eliminating program employees. The efficiency incentive is designed to encourage economical and efficient operations. The maximum amount paid by the state through the efficiency incentive must be limited for cost containment purposes. The nursing home rule established a maximum of \$2 per resident per day as a reasonable limit for an efficiency incentive since it encourages providers to reduce its costs without creating a severe burden on the state budget. Additionally, it is reasonable to place a limit on the efficiency incentive so that the incentive is not so strong that providers are encouraged to reduce necessary costs in areas that support the program of the facility.

Statement of Need and Reasonableness:

Item F provides for the addition of the program, maintenance, and administrative payment rates plus any applicable efficiency incentive. It is necessary and reasonable to do so in order to compute a total operating cost payment rate which includes all the components. Also, by making the efficiency incentive a component of the total operating cost payment rate rather than treating it as a historical cost, the facility must continue to be efficient in order to continue to receive the efficiency allowance in future years.

Statement of Need and Reasonableness:

Subpart 3 specifies the procedures that will be followed when establishing an adjustment to a facility's program operating cost payment rate. Item A requires the adjustment to be made if the commissioner has issued an order to correct a deficiency in program staff and if specific requirements are met. The adjustment is a necessary and reasonable method to increase rates to pay for costs that are not historically built into the rate. This is why it is also reasonable to only have a one-time adjustment. Once rates are adjusted, the historical cost base for the next reporting year is adjusted if the monies are actually spent for the prescribed purpose. Thereby, the facility's base includes the necessary program cost increases and the base for the future year is then adequate to support the services necessary to meet standards. The program portion of the rate is the only portion applicable to program staff ratios and thus it is reasonable to only adjust costs attributable to increasing program staff ratios.

It is necessary and reasonable to require that the staff complement is equal to or exceeds the staff complement on which rates are based and that the deficiency cannot be corrected by reallocating costs because this insures that staff costs that have been or are being paid in the rates are first applied to correcting the deficiency. This reallocation includes amounts reimbursed as a result of a change in ownership or reorganization between related organizations and efficiency incentives or other allowances. This relocation requirement insures that the rates that have been or are being paid are first applied to correcting the deficiency especially when the payment results from discretionary spending transactions which can be avoided and thus do not have to be incurred in an economically and efficiently operated facility. It is necessary and reasonable to require that the deficit cannot be corrected through a special needs rate so that the one-time adjustment remains the avenue of last resort.

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SuperC. 7-22-88 Date Appr.
State Rep. In. 1-1-86 Date Eff.